

REMARKS

This is responsive to an Office Action mailed on January 11, 2005. In the Office Action the Examiner rejected claims 1-3, 8-10, 15, 17-25 and 27-30 and objected to claims 4-7, 11-14, 16 and 31. Applicant has amended claims 1, 3 and 25-31. The application currently includes claims 1-25 and 27-31.

The Examiner objected to claims 3 and 24-31. Claim 3 has been amended to provide proper antecedent basis to the elements of claim 3. Claims 24-31 have been amended to correct the numbering error in the claims where two claims were numbered 24.

The second claim 24 has been renumbered claim 25 and all claims subsequent to the second claim 24 have also been amend to provide correct numbering of the claims.

The Examiner rejected claim 1 as being anticipated by U.S. Patent No. 6,033,363 (hereinafter the Farley patent). The Examiner alleged that the Farley Patent discloses a surgical joint including a first clamping member 52, a second clamping member 54, a shaft 56 disposed through an attachment end of the first clamping member 52 and communicating with the second clamping member and a wedge member or "actuating mechanism" or "force providing mechanism" 60 disposed about the shaft 56 to ensure adequate constriction of each clamping member and a cam lever or "handle" 58 attached to the actuating mechanism.

Applicant respectfully disagrees with the Examiner that claim 1 (Amended) is anticipated by the Farley patent. An element of claim 1 (Amended) includes a force providing mechanism positioned between the first and second clamping members and having a handle attached thereto. The Farley patent does not disclose a force providing mechanism positioned between the first and second clamping members that also has a handle attached to the force providing mechanism. The Farley patent discloses first and second clamping members separated by a wedge shaped spacer

that is positioned about a shaft. The shaft is positioned through the first and second clamping members. A camming mechanism is attached to the top of the shaft above the first clamping member where a handle is attached to the camming mechanism.

From the Office Action, it is presumed that the Examiner is referring to the wedge spacer as the force providing mechanism. The wedge spacer does not have a handle attached thereto, rather the handle is attached to the camming mechanism. The camming mechanism is positioned above the first clamping member. The camming mechanism cannot be considered to be the force providing mechanism as defined in claim 1(Amended) because the force defining mechanism is defined as being positioned between the first and second clamping members. Further the wedge shaped spacer also cannot be considered to be the force providing mechanism as defined in claim 1 (Amended) because the wedge shaped spacer does not have a handle attached thereto. Therefore, the Farley patent does not disclose a force providing mechanism positioned between the first and second clamping members and also having a handle attached thereto as defined in claim 1 (Amended).

For the forgoing reasons, the Farley patent does not disclose each and every element of claim 1 (Amended). Therefore, the Farley patent does not anticipate claim 1 (Amended). Reconsideration and allowance of claim 1 (Amended) are respectfully requested.

Claims 2-8 depend from independent claim 1 (Amended). Since claim 1 is believed to be in allowable form, claims 2-8, which depend from claim 1, are also believed to be in allowable form. Reconsideration and allowance of claims 2-8 are respectfully requested.

The Examiner also rejected independent claim 9 as being anticipated by the Farley patent for the reasons stated with

respect to independent claim 1. Applicant also respectfully disagrees that claim 9 is anticipated by the Farley patent. An element of claim 9 is a handle fixedly connected to the actuating mechanism where the actuating mechanism is disposed about the shaft between the first and second clamping members.

The Farley patent discloses a wedge shaped spacer positioned between the first and second clamping members and about a shaft and a camming mechanism attached to an end of the shaft above the upper clamping member where the camming member has a handle attached thereto. The Farley patent does not disclose an actuating mechanism disposed about a shaft and positioned between the first and second clamping members and having a handle connected to the actuating mechanism.

For the forgoing reasons, the Farley patent does not disclose each and every element of claim 9. Therefore, the Farley patent does not anticipate claim 9. Reconsideration and allowance of claim 9 are respectfully requested.

Claims 10-14 depend from independent claim 9. Since claim 9 is believed to be in allowable form, claims 10-14, which depend from claim 9, are also believed to be in allowable form. Reconsideration and allowance of claims 10-14 are respectfully requested.

The Examiner also rejected independent claim 15 as being anticipated by the Farley patent for the reasons stated with respect to independent claim 1. Applicant also respectfully disagrees that claim 15 is anticipated by the Farley patent. An element of claim 15 is a wedge disposed between the first and second legs of a clamping portion where the wedge is movable to force the first and second legs to move in opposing directions thereby placing the clamping portion in the clamping position.

The Farley patent discloses a wedge shaped spacer positioned between the first and second clamping members and about a shaft.

The spacer forces the legs of the first clamping member and the

legs of the second clamping member toward each other, respectively, to place both the first and second clamping members into the clamping position. The wedge spacer disclosed in the Farley patent does not force the legs of the first clamping member in opposing directions. The wedge spacer disclosed in the Farley patent does not force the legs of the second clamping member in opposition directions. Therefore, the Farley patent does not disclose a wedge disposed between the first and second legs of a clamping portion as defined in claim 15.

For the forgoing reasons, the Farley patent does not disclose each and every element of claim 15. Therefore, the Farley patent does not anticipate claim 15. Reconsideration and allowance of claim 15 are respectfully requested.

Claims 16-20 depend from independent claim 15. Since claim 15 is believed to be in allowable form, claims 16-20, which depend from claim 15, are also believed to be in allowable form.

Reconsideration and allowance of claims 16-20 are respectfully requested.

The Examiner also rejected independent claim 21 as being anticipated by the Farley patent for the reasons stated with respect to independent claim 1. Applicant also respectfully disagrees that claim 21 is anticipated by the Farley patent. An element of claim 21 is at least two clamping members, each clamping member having a clamping cavity with an opening for accepting an elongated member in a generally orthogonal direction to the axis of the member.

The Farley patent discloses a surgical clamp having two clamping members, both having first and second legs that define clamping bores. Elongated members are positioned into the clamping bores through the ends of the clamping bores in a direction that is substantially parallel to the axis of the member. The clamping bores cannot accept elongated members in a direction substantially orthogonal to the axis of the elongated

member as defined in claim 21 because there is no opening to the clamping bore along the length of the clamping bore, rather the openings are at the ends of the clamping bores.

For the forgoing reasons, the Farley patent does not disclose each and every element of claim 21. Therefore, the Farley patent does not anticipate claim 21. Reconsideration and allowance of claim 21 are respectfully requested.

Claims 22-27 depend from independent claim 21. Since claim 21 is believed to be in allowable form, claims 22-27, which depend from claim 21, are also believed to be in allowable form.

Reconsideration and allowance of claims 22-27 are respectfully requested.

The Examiner rejected independent claim 15 as being anticipated by U.S. Patent No. 5,727,899 (hereinafter the Dobrovolny patent). The Examiner alleged that the Dobrovolny patent discloses a clamping member with a clamping portion 150, first and second leg portions 160, 162, a wedge 164 disposed between the first and second leg portions and a handle 120 attached to the wedge 164 (Fig. 4 and Col. 4, lines 34-49).

Applicant respectfully disagrees that the Dobrovolny patent anticipates claim 15. Claim 15 defines the present inventions as having a clamping portion having first and second legs and a wedge disposed between the first and second legs.

The Dobrovolny patent discloses a fulcrum portion that is a part of the second clamping member where the fulcrum portion flexes to allow the upper leg to move with respect to the lower leg. A portion of a component that flexes, such as the fulcrum portion 164, is not a wedge as defined in claim 15. Therefore, the Farley patent does not disclose each and every element of claim 15.

For the forgoing reasons, the Dobrovolny patent does not disclose each and every element of claim 15. Therefore, the Dobrovolny patent does not anticipate claim 15. Reconsideration

and allowance of claim 15 are respectfully requested.

Claims 17-20 depend from independent claim 15. Since claim 15 is believed to be in allowable form, claims 17-20, which depend from claim 15, are also believed to be in allowable form.

Reconsideration and allowance of claims 17-20 are respectfully requested.

The Examiner also rejected claim 21 as being anticipated by the Dobrovolny patent. In rejecting claim 21, the Examiner made the same allegations made with respect to claim 15 and further alleged that the Dobrovolny patent discloses that the clamping portion 150 can have a clamping member 12 rotatably attached to clamping portion 150 wherein the clamping member is positioned in the clamping position by movement of the wedge about the fulcrum (Fig. 2).

Applicant respectfully disagrees that the Dobrovolny patent anticipates claim 21. Claim 21 defines the present inventions as having a clamping portion having first and second legs and a wedge disposed between the first and second legs. An element of claim 21 is at least two clamping members, each clamping member having a clamping cavity with an opening for accepting an elongated member in a generally orthogonal direction to the axis of the member.

The Dobrovolny patent discloses a first clamping member 12 and a second clamping member 14. The first clamping member 12 includes a clamping bore with a slot that allows the clamping bore to constrict. However, the size of the slot does not allow an elongated member to be positioned within the clamping bore of the first clamping member in a generally orthogonal direction the axis of the member. Rather, the elongated member is positioned into the clamping bore by positioning an end of the elongated member into the clamping bore and sliding the elongated member axially therethrough.

As such, the Dobrovolny patent does not disclose at least

two clamping members having clamping cavities for accepting elongated members in a generally orthogonal direction to the axis of the member. Therefore, the Dobrovolny patent does not anticipate claim 21. Reconsideration and allowance of claim 21 are respectfully requested.

Claims 22-27 depend from independent claim 21. Since claim 21 is believed to be in allowable form, claims 22-27, which depend from claim 21, are also believed to be in allowable form.

Reconsideration and allowance of claims 22-27 are respectfully requested.

The Examiner also rejected independent claim 28 as being anticipated by U.S. Patent Application No. 2003/0191370A1 (hereinafter the Phillips application). The Examiner alleged that the Phillips application discloses a clamp having a pin 20 extending through the clamp member into a clamping cavity, an activating mechanism 28 that biases the pin 20 into the clamping cavity and a wedge member 40 that is used to apply force to the pin 20 (Fig. 2, paras. [00170]-[0020]).

Applicant respectfully disagrees that claim 28 (Amended) is anticipated by the Phillips application. An element of claim 28 is a pin activating mechanism positioned about the pin where the pin activating mechanism moves the pin within the cavity and places the clamping member in the clamping position.

In contrast, the Phillips application discloses a spring loaded pin. An end of the spring abuts an end of the pin and biases the pin into a socket. The spring is not positioned about the pin. Therefore, the Phillips application does not disclose each and every element of claim 28 (Amended).

For the foregoing reasons, the Phillips application does not anticipate claim 28 (Amended). Reconsideration and allowance of claim 28 (Amended) are respectfully requested.

Claims 29-32 depend from independent claim 28. Since claim 28 is believed to be in allowable form, claims 29-32, which

depend from claim 28, are also believed to be in allowable form.

Reconsideration and allowance of claims 29-32 are respectfully requested.

The Examiner also provisionally rejected claims 1-25 and 27-31 under 35 U.S.C. § 101 as claiming the same invention as that of claims 1-25 and 27-31 of copending Application No. 10/664,195.

Upon receipt of a Notice of Allowance of the claims in copending Application No. 10/664,195, Applicant will amend the present application to overcome the double patenting rejection.

Respectfully submitted,

WESTMAN CHAMPLIN & KELLY, P.A.

By:


Peter J. Ims, Reg. No. 48,774
Suite 1600 - International Centre
900 Second Avenue South
Minneapolis, Minnesota 55402-3319
Phone: (612) 334-3222 Fax: (612) 334-3312

PJI:lah